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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.         | CONFIRMATION NO.       |
|---|-------------|----------------------|-----------------------------|------------------------|
| 09/741,665  | 12/18/2000  | William B. Douglas   | Essent.01USU1               | 7055                   |
| 27479 7590 03/05/2007<br>COCHRAN FREUND & YOUNG LLC<br>2026 CARIBOU DR<br>SUITE 201<br>FORT COLLINS, CO 80525 |             |                      | EXAMINER<br>DUNHAM, JASON B |                        |
|   |             |                      | ART UNIT<br>3625            | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>03/05/2007     | DELIVERY MODE<br>PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/741,665

Applicant(s)

DOUGLAS, WILLIAM B.

Examiner

Jason B. Dunham

Art Unit

3625

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 13 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).  
13. ☐ Other: \_\_\_\_\_.

  
YOGESH C. GARG  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600

Continuation of 3. NOTE: Claim 34 was previously withdrawn in the claims filed 8/28/06, which were finally rejected in the office action dated November 16, 2006, and is newly presented in the claims filed 02/13/07.

Continuation of 11. NOTE: Applicant incorrectly asserts that Giovannoli (US 2006/0015413 A1) is not a proper reference under 35 USC 103(a). 35 USC 102(e), the basis for use of the Giovannoli reference, is presented here for clarification:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Giovannoli (US 2006/0015413 A1) claims priority through a continuation to Giovannoli (US 5,758,328) filed February 22, 1996. The effective date of Giovannoli (US 2006/0015413 A1) under 35 USC 103(a) is therefore February 22, 1996. The publication date of Giovannoli (US 2006/0015413 A1) would only be relevant if 35 USC 102(b), a statutory bar, was applied.

Applicant further argues that the Fairmarket discloses an auction which is excluded from claim 1. However, the examiner notes that Fairmarket is relied upon to disclose the limitation: "providing a listing of said goods from said entries on said computer business system without revealing said distributors so that said distributors remain anonymous to purchasers at all times while said goods are listed on said computer business system and after said goods are sold, so that said distributors may sell said goods on said electronic blind supply open commerce computer business system without affecting a pricing structure established by said distributors for said goods." Giovannoli discloses a fixed sales price and the motivation to combine the two references is noted in the final rejection. Furthermore, both references are directed towards direct linking between buyers and sellers and are analogous art. Applicant's assertion that Fairmarket teaches away from independent claims 19 and 38 is incorrect because Fairmarket is relied upon to disclose that it is obvious to allow distributors to remain anonymous in an electronic commerce system, not solely an auction system.